

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA,) 2:06-cr-00310-HDM-PAL
12) 2:12-cv-00851-HDM
12 Plaintiff/Respondent,)
13 vs.) ORDER
14 JOSEPH HALL,)
15)
15 Defendant/Petitioner.)
16 _____)

17 Defendant has filed a motion for discovery in connection with
18 his 28 U.S.C. § 2255 motion (#262). The government has opposed in
19 part (#268), and defendant has replied (#269).

20 Defendant does not have an automatic right to conduct
21 discovery in this proceeding. See *Bracy v. Gramley*, 520 U.S. 899,
22 904 (1997); *United States v. Sewell*, 2012 WL 1928727, at *1 (E.D.
23 Cal. 2012). The court may, however, "for good cause, authorize
24 [the defendant] to conduct discovery under the Federal Rules of
25 Criminal Procedure or Civil Procedure, or in accordance with the
26 practices and principles of law." Rule 6(a) of the Rules Governing
27 Section 2255 Proceedings. Good cause exists "where specific
28 allegations before the court show reason to believe that the

1 petitioner may, if facts are fully developed, be able to
 2 demonstrate that he is . . . entitled to relief. . . ." *Bracy*, 520
 3 U.S. at 908-09.

4 "A party requesting discovery must provide reasons for the
 5 request." Rule 6(b) of the Rules Governing Section 2255
 6 Proceedings. "The request must also include any proposed
 7 interrogatories and requests for admission, and must specify any
 8 requested documents." *Id.*

9 1. Discovery from Defendant's Criminal Prosecution

10 Defendant requests the discovery turned over by the government
 11 in connection with his criminal prosecution. The government argues
 12 that it does not believe such is "discovery" within the meaning of
 13 Rule 6 and that it does not oppose defendant obtaining such
 14 documents from his former attorneys. The government does, however,
 15 object to defendant's use of Rule 6 to obtain these documents as he
 16 has not demonstrated good cause for the request.

17 The court agrees that the discovery from defendant's criminal
 18 prosecution is not "discovery" under Rule 6. He therefore is not
 19 required to establish good cause to obtain it. Rather, as it is
 20 part of the file of his case and he is representing himself, he is
 21 entitled to it. Accordingly, the defendant's motion for the
 22 discovery from his criminal prosecution is **GRANTED**. Defendant's
 23 former attorneys are hereby **ORDERED** to provide defendant with
 24 copies of any discovery in their possession to the extent they have
 25 not already done so by previous order or otherwise.

26 2. Subpoenas for Counsel's Telephone and Cell Phone Records

27 Defendant seeks the office and cell phone records of his trial
 28 counsel, G. Luke Ciciliano. Defendant argues that he needs these

1 records to prove that Ciciliano never attempted to contact several
2 witnesses defendant wanted at trial. (See Gov't Opp'n to Def.
3 Motion to Vacate (Ciciliano Aff. ¶ 7)).

4 Ciciliano's telephone records would not be dispositive of
5 defendant's claim in this regard. Good cause does not therefore
6 exist to order their production, and the request for subpoenas is
7 **DENIED**.

8 3. All Notes and Files of Ciciliano and the Federal Public
9 Defender's Office Related to This Case

10 Defendant argues he needs these files to prove that Ciciliano
11 did not investigate his case as he claims, asserting that if
12 Ciciliano had investigated his case there would be notes and papers
13 to prove it.

14 The absence of notes would not prove a failure to investigate.
15 Nor would anything in the Federal Public Defender's file shed light
16 on whether Ciciliano conducted the investigations he claims to have
17 conducted. Good cause does not therefore exist to order the
18 production of these documents, and the request for such is **DENIED**.

19 4. Government's Plea Offer

20 Defendant asserts that Ciciliano rendered ineffective
21 assistance of counsel by not showing or discussing with him in
22 detail a plea offer made by the government just before trial. The
23 government argues that the contents of the written plea have no
24 bearing on the merits of this claim.

25 The proposed plea agreement could be relevant to defendant's
26 claim and the court's determination thereof. Good cause exists for
27 its production. Accordingly, the defendant's request for a copy of
28 the proposed plea agreement is **GRANTED**. The government shall

1 provide defendant with a copy of the written plea offered just
2 before trial in this matter.

3 5. Transcripts of Voir Dire, Opening and Closing, Jury
4 Instructions, and Sidebars

5 The transcripts of the defendant's trial are also not
6 "discovery" within the meaning of Rule 6. However, the record
7 reflects that, excluding the voir dire transcript, the defendant
8 should already be in possession of his trial transcript. The
9 transcripts were completed before defendant's sentencing, at which
10 he represented himself. In order to represent himself, defendant
11 was provided the file of his case, which would have included the
12 already completed trial transcripts. Accordingly, the defendant's
13 request for transcripts of all sidebars, opening and closing
14 arguments, and jury instructions, is **DENIED WITHOUT PREJUDICE**. Any
15 renewed motion shall specify which portions of the transcript he
16 seeks that he was not previously provided, and the basis for such
17 request.

18 However, defendant does not likely possess the voir dire
19 transcript as it was completed after he was sentenced. The
20 government does not oppose defendant's request in this regard.
21 Accordingly, the defendant's motion for the voir dire transcript is
22 **GRANTED**. The clerk of the court shall send defendant a copy of the
23 redacted voir dire transcript (#202) at no cost to the defendant.

24 6. Jury Verdict Form

25 The jury verdict form is part of the file of this case, and
26 therefore is not "discovery" within the meaning of Rule 6. The
27 defendant's request for a copy of the jury verdict form is
28 therefore **GRANTED**. The clerk of the court shall send defendant a

1 copy of the jury verdict (#117) at no cost to defendant.

2 7. Visiting Records from North Las Vegas Detention Center
3 Defendant requests the visiting records to show that Ciciliano
4 did not "meet" with him the day before trial to discuss the
5 government's offered plea agreement as stated in his affidavit.
6 (See Gov't Opp'n to Mot. to Vacate (Ciciliano Aff. ¶ 10)). By this,
7 defendant means to show that Ciciliano did not physically come to
8 the jail to see him. The government opposes the request, arguing
9 that Ciciliano's use of the word "met" does not necessarily mean he
10 went to the detention center in person but could include a
11 discussion with defendant over the telephone. Because defendant
12 admits that Ciciliano at the very least spoke with him the day
13 before trial about a proposed plea agreement, and Ciciliano does
14 not claim he physically went to the detention center to do so, the
15 visiting records are irrelevant. Good cause does not therefore
16 exist for their production, and the defendant's request for such is
17 **DENIED**.

18 8. Ciciliano's Billing Records

19 Defendant argues that "the reason for this request should be
20 obvious." However, the reason is not obvious to the court, and
21 defendant does not otherwise explain how Ciciliano's billing
22 records pertain to any of the claims asserted in his § 2255 motion.
23 Accordingly, the request is **DENIED**.

24 9. All government notes of police reports, interviews and
25 investigations

26 Defendant provides no basis for this request. If defendant is
27 entitled to any of these documents, it is only to the extent they
28 were turned over by the government during discovery. Any discovery

1 in his former counsel's possession will be provided to defendant
2 pursuant to this order. Accordingly, this request is **DENIED**.

3 10. Grand Jury Matters

4 Defendant seeks a copy of the Grand Jury transcript and other
5 unspecified "matters." As the court has already ordered this
6 transcript be provided to defendant, (See Doc. #141, Minutes of
7 Status Conference on January 8, 2009), defendant's request for the
8 grand jury transcript is **DENIED**. To the extent defendant seeks
9 disclosure of other unspecified matters, it is unclear what he
10 wants or the basis for his request. The remainder of defendant's
11 request is therefore also **DENIED**.

12 11. Interrogatories of Counsel, All Government Witnesses, and
13 Other Unspecified Witnesses

14 Defendant submits no proposed interrogatories in accordance
15 with Rule 6(b) of the Rules Governing Section 2255 motions, does
16 not explain the basis for this request, and fails to even identify
17 with specificity all persons to whom he wishes to send
18 interrogatories. Absent further specification by defendant as to
19 what questions he wants to ask which persons and why, the request
20 is **DENIED WITHOUT PREJUDICE**.

21 In accordance with the foregoing, it hereby ordered:

22 1. Defendant's motion for the discovery from his criminal
23 prosecution is **GRANTED**. No later than May 20, 2013, defendant's
24 former attorneys shall provide defendant with copies of all
25 discovery in their possession to the extent they have not already
26 done so by order of the court or otherwise;

27 2. Defendant's motion for a copy of the government's plea
28 offer is **GRANTED**. No later than May 20, 2013, the government shall

1 provide defendant with a copy of the proposed plea agreement
2 offered just before trial;

3 3. Defendant's motion for transcripts is **DENIED WITHOUT**
4 **PREJUDICE** as to the request for transcripts of the opening and
5 closing arguments, jury instructions, and sidebars. The motion for
6 the voir dire transcript is **GRANTED**. The clerk of the court shall
7 send defendant a copy of the redacted voir dire transcript (#202)
8 at no cost to defendant;

9 4. Defendant's motion for a copy of the jury verdict is
10 **GRANTED**. The clerk of the court shall send a copy of the jury
11 verdict (#117) to defendant;

12 5. In all other respects, the defendant's motion for discovery
13 (#262) is **DENIED**; and

14 6. The clerk of the court shall serve a copy of this order on
15 Mario Valencia, Todd Leventhal, Jacqueline Naylor, Gerald Luke
16 Ciciliano, Shari Kaufman, Monique Kirtley, and Michael Sanft,
17 defendant's former attorneys of record.

18 || IT IS SO ORDERED.

19 DATED: This 18th day of April, 2013.

Howard D McKibben
UNITED STATES DISTRICT JUDGE